

COVERAGE

Prior to the 1939 amendments, agricultural labor was defined for purposes of the Federal law by administrative regulation of the Bureau of Internal Revenue. Services on a farm in the raising and harvesting of any agricultural produce were excluded, as were services in some processing and marketing activities when performed for the farmer who raised the crop and as an incident to primary farming operations. Most of the States similarly defined agricultural labor by regulation or interpretation. The definition of agricultural labor added to the FUTA in 1939 broadened the exclusion; some processing and marketing activities were excluded whether or not they were performed in the employ of the farmer. Also excluded were services in the management and operation of a farm, if they were performed for the farm owner or operator.

The 1970 amendments to the FUTA narrowed the definition of agricultural labor, thereby extending coverage to some marginal agricultural activities. Three tests are applied in determining whether services are agricultural labor: (1) the service must be performed in the employ of the operator of a farm; (2) the service must be performed with respect to a commodity in its unmanufactured state; and (3) the operator must have produced more than one-half of a commodity with respect to which the service is performed. If any of the three tests is not met, the services are not agricultural labor and are not excluded from coverage.

The 1976 amendments did not change the definition of agricultural labor--they did, however, cover agricultural labor if performed for an employer who, in any calendar quarter in the current or preceding calendar year paid cash remuneration of \$20,000 or more for individuals employed in agricultural labor, or who on each of some 20 days in 20 different weeks during the current or preceding calendar year employed at least 10 individuals in agricultural labor.

In connection with the extension of coverage to some agricultural workers, the FUTA established a special rule for determining who will be treated as the employer, and therefore, liable for the Federal tax, in the case of agricultural workers who are members of a crew furnished by a crew leader to perform services in agricultural labor for a farm operator. Individuals who are members of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator are treated as employees of the crew leader if the leader is registered under the Migrant and Seasonal Agricultural Protection Act, or if substantially all the members of the crew operate or maintain mechanized equipment furnished by a crew leader. A member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator will not be treated as an employee of the crew leader if the individual is an employee of the farm operator within the meaning of the State law. Conversely, any worker who is furnished by a crew leader to perform service in agricultural labor for a farm operator but who is not treated as an employee of the crew leader is treated as an employee of the farm operator. This special rule is intended to resolve any question as to whether an individual's employer is the farm operator or crew leader. The same size-of-firm coverage provisions (10 in 20 weeks or \$20,000 in a calendar quarter) apply to a crew leader as to a farm operator.

South Carolina excludes from agricultural coverage services performed by students enrolled in and attending classes in a secondary school or an accredited college for at least 5 months during a year and by part-time individuals who at the conclusion of the agricultural labor would not otherwise qualify for benefits.

COVERAGE

125.02 DOMESTIC SERVICE.--Because of the 1976 amendments, all of the States cover domestic service in private homes, college clubs or fraternities if the quarterly remuneration, in cash, equals or exceeds \$1,000. Four States go beyond the Federal provision. The District of Columbia, New York and the Virgin Islands cover such service if the quarterly payroll is at least \$500 and Hawaii if the payroll is \$225 or more (Table 100). Also, California specifically includes in domestic coverage in-home supportive services provided under the Welfare and Institution Code. Maine excludes homeworkers in the knitted outerwear industry. Virginia specifically excludes from domestic coverage medical services performed by an individual employed to perform those services in a private residence or a medical institution if the person who employed the individual is also the person receiving the services, and services performed under agreement with a Public Human Service Agency in the home of the recipient of the service or the provider of the service.

125.03 SERVICE FOR RELATIVES.--All States exclude service for an employer by a spouse or minor child and, except in New York, service of an individual in the employ of a son or daughter.

125.04 SERVICE OF STUDENTS AND SPOUSES OF STUDENTS.--Prior to the 1970 amendments, service in the employ of a school, college or university by a student enrolled and regularly attending classes at such school was excluded from the definition of employment. The 1970 amendments retained this exclusion and also excluded service performed after December 31, 1969, by a student's spouse for the school, college, or university at which the student is enrolled and regularly attending classes, provided the spouse's employment is under a program designed to give financial assistance to the student, and the spouse is advised that the employment is under such student-assistance program and is not covered by any program for unemployment insurance. Also excluded is service by a full-time student in a work-study program provided that the service is an integral part of the program. Ten States^{1/} exclude services performed by a full-time student in the employ of an organized camp if the services meet certain criteria.

125.05 SERVICE OF PATIENTS FOR HOSPITALS.--The 1970 amendments excluded service performed for a hospital after December 31, 1969, by patients of the hospital. Such service may be excluded from coverage under the State law whether it is performed for a hospital which is operated for profit or for a nonprofit or State hospital which must be covered under the State law.

125.06 SERVICE FOR FEDERAL INSTRUMENTALITIES.--An amendment to the FUTA, effective with respect to services performed after 1961, permits States to cover Federal instrumentalities which are neither wholly nor partially owned by the United States, nor exempt from the tax imposed under section 3301 of FUTA by virtue of any other provision of law which specifically refers to such section of the Code in granting such exemptions. All states except New Jersey have provisions in their laws that permit the coverage of service performed for such wholly privately owned Federal instrumentalities.

125.07 MARITIME WORKERS.--The FUTA and most State laws initially excluded maritime workers, principally because it was thought that the Constitution prevented the States from covering such workers. Supreme Court decisions in *Standard Dredging Corporation v. Murphy* and *International Elevating Company v. Murphy*, 319 U.S. 306 (1943), were interpreted to the effect that there is no such bar. In 1946 the FUTA was amended to permit any State from which the operations of an American vessel operating on navigable waters within, or within and without the United States are ordinarily regularly supervised, managed, directed, and controlled, to require contributions to its unemployment fund under its State unemployment compensation law.

^{1/}Calif., Maine, Md., Mo., N.C., Oreg., Tenn., Tex., Vt. and Va..

COVERAGE

Some States whose laws did not specifically exclude maritime workers automatically covered such workers after 1943. In others, coverage was automatic after 1946 because of provisions that State coverage would follow any extension of Federal coverage. Many other States took legislative action to limit the exclusion of maritime service to service performed on non-American vessels. At present most laws provide for coverage of maritime workers. In the only coastal States without such statutory coverage, maritime workers are covered indirectly. New York has entered into reciprocal arrangements covering such workers, and in Maryland, Mississippi and South Carolina, maritime employers have elected coverage. In Arizona, Montana, Nevada and North Dakota, the exclusion of maritime workers has little meaning.

125.08 COVERAGE OF SERVICE BY REASON OF FEDERAL COVERAGE.--Most States have a provision that any service covered by the FUTA is employment under the State law (Table 101).

Many States have added another provision that automatically covers any service which the Federal law requires to be covered even though it is service which is not covered under the Federal law.

125.09 VOLUNTARY COVERAGE OF EXCLUDED EMPLOYMENTS.--In all States except Alabama, Massachusetts and New York, employers, with the approval of the State agency, may elect to cover most types of employment which are exempt under their laws. The New York law permits employers who are not otherwise covered as agricultural employers to elect coverage of agricultural workers under certain conditions. New York also permits coverage of services performed by an individual employed at a place of religious worship.

125.10 SELF-EMPLOYMENT.--Employment, for purposes of unemployment insurance coverage, is employment of workers who work for others for wages; it does not include self-employment. Although the protection of the Federal old-age, survivors and disability insurance program has been extended to most of the self-employed, protection under the unemployment insurance program is not feasible, largely because of the difficulty of determining whether in a given week a self-employed worker is unemployed. One small exception has been incorporated in the California law. A subject employer may apply for self-coverage: if election is approved, wages for purposes of contributions and benefits are deemed to be the quarterly wages needed to qualify for the maximum weekly benefit amount and the contribution rate is fixed at 1.25 percent of wages.

130 COVERAGE OF OFFICERS OF CORPORATIONS

Under the FUTA an officer of a corporation is defined as an employee of the corporation and wages paid to the employee are subject to the Federal Tax. However, some States have enacted exclusions from coverage and restrictions on benefits for corporate officers.

In California an individual who is the sole stockholder or the only stockholder other than the spouse and those who are related by marriage or blood to all other stockholders and who own 25 percent of the stock of a private corporation and an employee under the law may file a statement disclaiming any rights to benefits and be exempt from contributions. The exemption continues for not less than 2 years and as long as the statement is in effect. California also exempts services performed by an officer of the corporation who is the sole shareholder, or the only shareholder other than its spouse if not subject to FUTA.

California and Iowa exempt services performed by an individual in the employ of a corporation of which he/she is the majority or controlling shareholder and an officer if not subject to FUTA. Alaska has a similar provision but services are exempt only if the corporation is not a governmental entity and the employee is an executive officer of the corporation. Oklahoma exempts services, not considered nonprofit, if he/she owns 100% of the stock. California exempts an officer or shareholder of an agricultural corporation unless the corporation is an employer defined under FUTA. Minnesota has a similar provision which exempts officers or shareholders in a family agricultural corporation.

COVERAGE

Delaware exempts services performed by an officer of a corporation organized and operated exclusively for social or civic purposes and only when the services performed by the officer are part-time and when the remuneration received does not exceed \$75 in any calendar quarter. Also, exempts services performed by corporate officers when one-half or more of the ownership interest was owned or controlled directly or indirectly by the individual's spouse, child or parent, if the individual is under 18; or when one-fourth or more of the ownership interest was owned or controlled, directly or indirectly by the individual; or when no more than 4 officers of a corporation request exemption from coverage. North Dakota has a similar provision which exempts corporate officers when one-fourth or more of the ownership interest was owned or controlled by the individual's spouse, child or parent or by any combination of them if the corporation requests exemption from coverage.

Washington exempts services performed by corporate officers. However, this exemption does not apply to corporate officers employed by nonprofit or governmental employers.

In Hawaii an individual will not be eligible for benefits if an owner-employee of a corporation brings about his/her unemployment by divesting ownership, leasing the business interest, terminating the business, or by other similar actions. Also, Hawaii excludes from coverage services for a family owned private corporation, organized for profit that employs family members who own at least 50 percent of the corporate shares provided certain criteria are met.

Michigan limits benefits payable based on services performed in a family corporation in which the individual or his/her son, daughter, spouse or parent owns more than 50 percent of the proprietary interest in the corporation to no more than 10 weeks.

In Minnesota an individual who has been paid 4 times his/her weekly benefit amount may not use wages paid by an employing unit if the individual (a) individually or jointly with a spouse, parent or child owns or controls 25 percent or more interest in the employing unit or (b) is the spouse, parent or minor child of any individual who owns or controls 25 percent or more interest in the employing unit, and (c) is not permanently separated from employment.

Oregon exempts services performed by corporate officers who are directors of the corporation, who have a substantial corporation ownership interest and who are related by family, if the corporation elects not to provide coverage for the related family members.

In Texas an individual will not be eligible for benefits from the date of the sale of a business and until he/she is reemployed and eligible for benefits based on the wages received through the new employment if the business was a corporation and the individual was an officer or a majority or controlling shareholder in the corporation and was involved in the sale of the corporation; or if the business was a limited or general partnership and the individual was a limited or general partner who was involved in the sale of the partnership, or the business was a sole proprietorship and the individual was the proprietor who sold the business.

In Wisconsin the amount of base period wages used to compute total benefits payable to an individual may not exceed 10 times the individual's weekly benefit amount based on the individual's employment with a corporation or a limited liability company if one-half or more of the ownership interest in the corporation or limited liability company is or during the employment was owned or controlled by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or a corporation, if one-fourth or more of the ownership interest in the corporation is or during the employment was owned or controlled by

COVERAGE

the individual. Wisconsin also permits a corporate employer having taxable payrolls of \$400,000 or less to elect not to have the principal officers covered if the officers have a direct or indirect substantial ownership interest in the corporation.

Employers of corporate officers are liable for the full Federal tax on wages paid to these individuals whose services are covered under the Federal law but are excluded from coverage by State law.

(Next page 1-11)

Table 100.--Definition of Employer

State	Agricultural	Domestic	Nonprofit Organization	All other Employers--one employee	
	10 employees in 20 weeks or \$20,000 in a CQ unless otherwise specified (8 States)	\$1,000 in a CQ unless otherwise specified (5 States)	One or more ^{2/} (21 States)	Minimum period of time or payroll	Alternative conditions ^{3/}
(1)	(2)	(3)	(4)	(5)	(6)
Ala.	.....	.....	.....	20 weeks	.....
Alaska	.....	.....	.....	Any time	.....
Ariz.	.....	.....	.....	20 weeks	.....
Ark.	.....	^{1/}	X	10 days	None
Calif.	1 at anytime and wages in excess of \$100 in a CQ ^{1/}	.....	X	Over \$100 in qtr.	.....
Colo.	.....	.....	.....	Any time	.....
Conn.	.....	.....	X	20 weeks	.....
Del.	.....	.....	.....	20 weeks	.....
D.C.	1 at anytime	\$500 in CQ	X	Any time	.....
Fla.	5 in 20 wks or \$10,000 in a CQ	.....	.....	20 weeks	.....
Ga.	.....	.....	.....	20 weeks	.....
Hawaii	.....	\$225 in CQ to one employee	X	Any time	.....

(Table continued on next page)

Table 100.--Definition of Employer (Continued)

State	Agricultural	Domestic	Nonprofit Organization	All other Employers-- one employee	
	10 employees in 20 weeks or \$20,000 in a CQ unless otherwise specified (8 States)	\$1,000 in a CQ unless otherwise specified (5 States)	One or more ^{2/} (21 States)	Minimum period of time or payroll	Alternative conditions ^{3/}
(1)	(2)	(3)	(4)	(5)	(6)
Idaho	X	20 weeks	\$300 in qtr.
Ill.	20 weeks	.....
Ind.	20 weeks	.....
Iowa	X	20 weeks	.....
Kans.	20 weeks	.....
Ky.	20 weeks	.....
La.	20 weeks	.....
Maine	<u>1/4/</u>	<u>1/</u>	.....	20 weeks	.....
Md.	X	Any time	.....
Mass.	X	13 weeks	.....
Mich.	X	20 weeks	\$1,000 in CY
Minn. ^{4/}	4 in 20 wks. or \$20,000 in a CQ <u>1/</u>	<u>1/</u>	X	20 weeks	.....
Miss.	20 weeks	.....
Mo.	20 weeks	.....

(Table continued on next page)

Table 100.--Definition of Employer (Continued)

State	Agricultural	Domestic	Nonprofit Organization	All other Employers--one employee	
	10 employees in 20 weeks or \$20,000 in a CQ unless otherwise specified (8 States)	\$1,000 in a CQ unless otherwise specified (5 States)	One or more ^{2/} (21 States)	Minimum period of time or payroll	Alternative conditions ^{3/}
(1)	(2)	(3)	(4)	(5)	(6)
Mont.	X	\$1,000 in yr.	.....
Nebr.	20 weeks	.....
Nev.	\$225 in qtr.	.....
N.H.	5/	.....	X	20 weeks	.....
N.J.	X	\$1,000 in yr.	.....
N. Mex.	X	20 weeks	\$450 in qtr.
N.Y.	\$500 in CQ	.....	\$300 in qtr.	.....
N.C.	20 weeks	.....
N. Dak.	20 weeks	.....
Ohio	\$1,000 per individual or \$1,500 for 2 or more	.....	20 weeks	.....
Okla.	20 weeks	.....
Oreg.	X	18 weeks	\$225 in qtr.
Pa.	X	Any time	.....

(Table continued on next page)

Table 100.--Definition of Employer (Continued)

State	Agricultural	Domestic	Nonprofit Organization	All other Employers--one employee	
	10 employees in 20 weeks or \$20,000 in a CQ unless otherwise specified (8 States)	\$1,000 in a CQ unless otherwise specified (5 States)	One or more ^{2/} (21 States)	Minimum period of time or payroll	Alternative conditions ^{3/}
(1)	(2)	(3)	(4)	(5)	(6)
P.R.	1 or more at any time	.....	X	Any time	.....
R.I.	1 or more at any time	.....	X	Any time	.....
S.C.	.....	.....	.....	20 weeks	.....
S. Dak.	.....	.....	.....	20 weeks	.....
Tenn.	.....	.....	.....	20 weeks	.....
Tex.	3 in 20 wks. or \$6,250 in a CQ	.....	.....	20 weeks	.....
Utah	.....	.....	.....	\$140 in qtr.	.....
Vt.	.....	.....	.....	20 weeks	.....
Va.	<u>1/</u>	.....	.....	20 weeks	.....
V.I.	1 or more at any time	\$500 in CQ	X	Any time	.....
Wash.	<u>1/</u>	<u>1/</u>	X	Any time	.....
W. Va.	.....	.....	.....	20 weeks	.....
Wis.	.....	.....	.....	20 weeks	.....
Wyo.	.....	.....	.....	Over \$500 in yr.	.....

(Footnotes on next page)

(Footnotes for Table 100)

- 1/ Includes other than cash remuneration.
- 2/ All other States cover nonprofit organizations that employ 4 or more in 20 weeks as required by Federal law.
- 3/ Or a quarterly payroll of \$1,500, unless otherwise specified.
- 4/ Agricultural labor performed by an individual 16 yrs. of age or younger is excluded from agricultural coverage unless the employer is covered under the Federal law, Minn.; agricultural labor performed by an alien in the harvesting of apples is excluded from agricultural coverage, Maine.
- 5/ Coverage on elective basis only, N.H..